Date of decision: 13.11.1995

SPECIAL CIVIL APPLICATION NO 8464 OF 1995.

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE B.C. PATEL

AND

THE HONOURABLE MS. JUSTICE R. M. DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involved a sub..

interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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Mr. Nitin Amin, learned advocate for petitioners
Mr. M.R. Anand, Senior advocate with Mr. Amit Panchal, learned Asstt. Govt. Pleader for respondents

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CORAM: B.C. PATEL & R. M. DOSHIT, JJ.
DATE: 13TH NOVEMBER 1995

ORAL JUDGMENT : (Per B.C. Patel, J.)

1. Petitioners, by preferring this petition, have prayed for issuance of direction for re-determining the amount of compensation under section 28.A of the Land

Acquisition Act (hereinafter referred to as the Act), in consonance with the order passed by learned Assistant Judge, Kheda at Nadiad in LAQ cases No. 500/87 to 519/87 on 4.12.1991.

2. Notification under section 4 is published in the gazette on 4.6.1981 for the lands referred to in the notification. After following the due procedure, notification under section 6 was published on 19.6.1983. Amended notification was published under section 6 on 22.8.1985. It appears that the Land Acquisition Officer determined the amount of compensation at Rs.2/- per sq. mtr. Some persons whose lands were acquired under this notification submitted applications under section 18 of the Act claiming compensation at Rs.20/- per sq. mtr. In References, after hearing the parties, learned Assistant Judge passed an order on 4.12.1991, vide Annexure 'B', enhancing the amount of compensation. Being aggrieved by the said order, State preferred First Appeals, being No. 810 of 93 to 829 of 1993.

3. The present petitioners, whose lands were acquired under the aforesaid notification, did not prefer applications under section 18 of the Act. However, after the order was passed by the Court, realising that the persons who preferred applications under section 18 of the Act in References have received higher amount of compensation, petitioners herein submitted applications to the respondent on 24.9.1984 under section 28.A of the Act. The grievance made before this Court is that the respondent, on 4.1.1993, passed an order, vide Annexure 'C', communicating that till the First Appeals filed by the State are disposed of by the High Court, their applications under section 28.A will not be decided and only after the decision is rendered by the High Court, their applications will be decided. It is averred in the petition that the present petitioners have preferred SCA No. 2138/93 in this Court against the order at Annexure 'C'. The attention of the Court was drawn that the Government has preferred appeals against the judgment and award on which reliance is placed, and, therefore, SCA No. 2138 of 93 was ordered to be heard along with the appeals preferred by the State. Grievance is made that papers of SCA No. 2138 of 93 are not traceable. It is contended that the appeals filed by the State have been dismissed at the stage of admission.

The petitioners have filed this petition as the earlier petition being SCA No. 2138 of 93 is not traceable by the office. In response to the Rule issued by this Court in this petition, Special Land Acquisition

Officer has filed his affidavit on 17th October 1995 pointing out that the applications were kept pending by order dated 4.1.1993 as the above mentioned First Appeals were pending before this Court at the relevant time. However, later on, on 12.2.1994, this Court dismissed the First Appeals filed by the State and the State approached the apex Court. It is also mentioned in the affidavit that by letter dated 15.7.1995 advocate for the petitioners informed that that Special Leave Petitions preferred by the State were rejected by the apex Court on 10.7.1995. That letter was received by the Land Acquisition Officer on 27.7.1995. Thereafter, fresh notices were sent to the claimants on 28.7.1995 and the concerned persons were informed that hearing of their applications under section 28.A is fixed on 7.8.1995. It is specifically averred in the affidavit that on 7.8.95, advocate Mr. Arun M Amin submitted an application on behalf of the claimants for an adjournment and the advocate was informed regarding the next date of hearing, i.e. 21.8.1995. On 21.8.1995, petitioners at Serial Nos. 3 to 10, 12, 16 to 19, 21 to 23, 26 to 28 and 30 remained present before the Land Acquisition Officer and their statements were recorded on the same date. It is further stated in the affidavit that petitioners No. 1, 2, 11, 13, 14, 20, 24, 25, 29 and 31 did not remain present on 21.8.1995. The deponent has further stated on oath that some of the petitioners submitted applications on 22.8.1995 requesting him to stay further proceedings regarding application under sec. 28.A of the Act. It is further stated that on 29.8.1995, a communication was sent to the Talati-cum-Mantri of Village Ode requesting him to inform the persons mentioned in the communication to remain present on 2.9.1995 for hearing of their applications under sec. 28.A and it is also stated in the affidavit that the said communication dated 2.9.1995 was served upon the persons mentioned therein by the Talati-cum-Mantri. On 2.9.1995, neither those persons nor their advocate remained present. It is pointed out in the affidavit that out of 15 persons whose names were mentioned in the communication, 10 persons are petitioners in this petition, viz: petitioners No. 1, 2, 11, 13, 14, 20, 24, 25, 29 and 31. It is further pointed out in the affidavit that on 19.9.1995, a communication was sent to Advocate Arun M Amin requesting him to produce any stay if granted the High Court in SCA No. 2138 of 1993. Thus, from the dates which are mentioned hereinabove, it is clear that some of the petitioners did appear on 21.8.95 before the Land Acquisition Officer whereas some of them did not and on 22.8.95 submitted applications to stay further proceedings of the applications under sec. 28.A of the

Act. All these facts are not referred to in the petition filed by the petitioners. Had these facts been narrated in the petition, this Court would not have issued Rule. These material facts are suppressed by the petitioners. It appears that the petitioners, after the matter has been decided by the apex Court, where in touch with the Land Acquisition Officer and the same is clear from the affidavit. As stated earlier, if these facts would have been mentioned in the petition, this Court would not have issued any process. As there is suppression of material facts, it is a fit case wherein the petitioners should be directed to pay cost of this petition.

4. In paragraph 20 of the affidavit, the Land Acquisition Officer has stated that he is ready and willing to decide the applications under section 28.A of the Act. Accordingly, we direct the respondent to decide the applications under section 28.A in accordance with law as early as possible.

While making payment, if the petitioners or any one of them is entitled to, the respondent is directed to deduct an amount of Rs.200/- in case of each of the petitioners towards cost of this petition. The respondent is further directed to deposit the amount of cost so deducted in this Court and to furnish a compliance report of this direction to this Court.

This petition stands disposed of with the aforesaid directions. Rule made partly absolute to the aforesaid extent.

csm./